

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEMETRIUS MCWHORTER,

Plaintiff,

COUNTRYWIDE HOME LOANS, INC.,
et al.

Defendants.

Case No. 2:11-CV-00892-JCM-CWH

ORDER

Presently before the court is plaintiff Demetrius McWhorter's motion to remand and for attorneys' fees. (Doc. #15). Defendants Countrywide Home Loans, Inc. ("Countrywide") and The Bank of New York Mellon ("Mellon") have responded (doc. #17) and plaintiff has replied (doc. #19).

Pursuant to 28 U.S.C. § 1446(b):

if [a] case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

Here, the case was initially filed on September 25, 2009. On June 2, 2011, as plaintiff in intervention, Mellon petitioned to remove the action to federal court. As a plaintiff, Mellon may not seek to remove a case to federal court under 28 U.S.C. § 1446(b). Moreover, even if Mellon was able to remove, more than a year has passed since the commencement of the action and thus

1 28 U.S.C. § 1446(b) bars removal.

2 The court takes note of defendants' argument that McWhorter was aware of Mellon's
3 involvement in the present dispute from at least December 3, 2009, and thus should have added
4 Mellon as a defendant earlier in the case. However, the court finds no merit to defendants'
5 arguments that McWhorter's failure to add Mellon as a defendant equitably tolls the one year bar
6 of 28 U.S.C. § 1446(b). Mellon could have joined the litigation as a plaintiff in intervention and
7 forced McWhorter to amend the complaint to add it as a defendant. By waiting nearly two years
8 to involve itself in the litigation, during which time the litigants engaged in mediation and
9 motion practice (including a motion for preliminary injunction, a motion to dismiss, and a
10 motion for summary judgment), Mellon has found itself barred by 28 U.S.C. § 1446(b). The
11 record also discloses that counsel for Mellon has been involved in this litigation from the outset
12 and has represented Mellon's interests since at least December 3, 2009, the hearing date for the
13 preliminary injunction.

14 McWhorter seeks \$5,000 in attorneys' fees pursuant to 28 U.S.C. § 1447. The court finds
15 this amount excessive given the nature of the briefing involved in the present motion to remand.
16 McWhorter is awarded \$500 in attorneys' fees.

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion to
19 remand and for attorneys' fees (doc. #15) be, and the same hereby is, GRANTED pursuant to the
20 above.

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22 DATED: August 26, 2011.

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26 UNITED STATES DISTRICT JUDGE
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